IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22820 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJEBHAI ALIMOHMADBHAI MOMIN - Petitioner(s)
Versus
THE DISTRICT DEVELOPMETN OFFICER & 3 - Respondent(s)

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Appearance :

HL PATEL ADVOCATES for Petitioner(s) : 1,
MR HS MUNSHAW for Respondent(s) : 1,
MS FALGUNI PATEL, AGP for Respondent(s) : 2,
RULE SERVED BY DS for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 31/08/2006

ORAL JUDGMENT

1. The short facts of the case are that the petitioner in capacity as the Deputy Sarpanch

and one another person namely Thakor Jitaji Chaturji who was sarpanch, were served with the notices for removal under Section 57 of the Gujarat Panchayat Act on the ground that the encroachments were made in the Gram Panchayat and no actions were taken by the Sarpanch as well as by the Deputy Sarpanch for removal of such encroachments. As per the petitioner pending the proceedings, the report was submitted before the District Development Officer, who was the first authority, that the the encroachments are duly removed by the Gram Panchayat after taking proper action. The District Development Officer on 20.07.2005, qua the show-cause notice issued to the Sarpanch Thakor Jitaji Chaturji, passed the order, whereby, he recorded that all encroachments are removed and therefore, the notice issued against the Sarpanch is withdrawn.

2. However, so far as the petitioner is concerned, who was Deputy Sarpanch, it is the case of the petitioner that a different treatment was given and the petitioner was ordered to be removed from the post of member of the Gram Panchayat as well as the Deputy Sarpanch. The petitioner carried the matter before the Development Commissioner in appeal and the said appeal is dismissed. It is under these circumstances, the petitioner has approached to this Hon'ble Court by preferring this petition.

3. I have heard Mr. Pandya, learned counsel appearing for the petitioner, Mr. Munshaw appearing for respondent No.1 and Ms. Patel, for respondent No.2. The other respondents though served, have chosen not to appear.

4. It is true that notice under Section 57 of the Act is withdrawn by the District Development Officer, which was issued to the Sarpanch for not taking action for removal of the encroachment. However, if the order passed in favour of the Sarpanch is read with the impugned order passed by the District Development Officer, so far as it relates to the petitioner herein, it does not come on record that the material was placed before the District Development Officer showing that the encroachment is removed, which was subject matter of proceedings against the petitioner.

5. Mr. Pandya, learned counsel appearing for the petitioner relied upon the report dated 14.06.2005 at Anenxure-E, which in the submission of Mr. Pandya is signed by Taluka Development Officer, Talati, Sarpanch, etc. to satisfy the Court that the encroachment of the property in question, which is owned by Suleman Habibbhai is already removed. He further submitted that in the original report, which was

submitted before the District Development Officer, the aforesaid aspect is very much there on the record and therefore, he submitted that this Court may accept the submission of the petitioner that the encroachment was already removed.

6. The present petition is essentially under Article 227 of the Constitution. Had the contention raised by the petitioner even before the Development Commissioner and dealt with by the Development Commissioner in the Appeal, possibly the matter could have been examined in light of the submissions made by Mr. Pandya on behalf of the petitioner. A perusal of the order passed by the Development Commissioner and even the memo of the appeal do not show that at any point of time, it was contended by the petitioner that the alleged encroachment was already removed on 14.06.2005 and consequently, the cause did not survive. Therefore, in absence of such contention having been raised, and as the authority had no opportunity to examine the said aspects, it is not possible to accept the contention of Mr. Pandya that the Court may proceed on the basis that the encroachment was already removed on 14.06.2005. As such, it will be a matter to be examined by the District Development Officer as to whether the encroachment was already removed on 14.06.2005 as per the report, copy whereof is

produced at Annexure-E. In the event it comes on record that the encroachment was already removed on 14.06.2005, possibly the petitioner may be entitled to get the same treatment as it was given by District Development Development Officer to the Sarpanch against whom the proceedings were also initiated for removal under Section 57 of the Act.

7. Mr Pandya, learned counsel appearing for the petitioner also contended that in the reply of the petitioner through out, i.e. before the District Development Officer as well as before the Development Commissioner, the contention of the petitioner was that the property belonged to Suleman Habibbhai and not of the petitioner and the construction was made as back as in the year 1972 when the property was alloted to Suleman Habibbhai. He therefore submitted that Suleman Habibbhai is cousin of the petitioner and when the property did not belong to the petitioner, it could not have been made a valid ground for removal of the petitioner under Section 57 of the Act. Prima facie the said contention raised on behalf of the petitioner is with substance. However, it appears from the record that there is no proper application of mind either by the District Development Officer nor by the Development Commissioner while passing the impugned order on the said aspects. If the property belongs to 3rd party and not the persons

who are office bearers of the Gram Panchayat, then whether such duty can be read attracting the power of removal is an aspect which may be required to be examined by the District Development Officer. Further the aspects regarding the steps taken by the person concerned in this regard may also be required to be examined.

8. It appears from the order of the District Development Officer that there is no application of mind regarding ownership of the property belonging to the cousin of the petitioner or some other party than the petitioner. It deserves to be recorded that if the property belongs to some 3rd party in which the person concerned is not having any interest, it may have a different repercussion, unless it is a case of the Authority that the property is held by 3rd party as benami and the office bearer himself is the owner of the property. Since there is no application of mind by the applicant in this regard, I find it proper to leave the matter at that stage.

9. In view of the above, I find that as both the aforesaid crucial aspects of the case are not examined by the District Development Officer as well as by the Development Commissioner, it can be said that the error apparent on the face of the record is committed. Therefore, the orders

passed by the District Development Officer as well as the Development Commissioner deserves to be quashed and set aside and hence the impugned orders are quashed and set aside with the further direction that the District Development Officer shall re-hear the petitioner within a period of three months from the receipt of the order of this Court and shall pass a fresh order after taking into consideration the observations made by this Court hereinabove.

10. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs.

(JAYANT PATEL, J.)

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